

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	)	
	)	ICC Docket No. 10-0467
Proposed general increase in	)	
electric rates	)	

**JOINT REPLY IN SUPPORT OF THE JOINT MOTION  
TO CONSOLIDATE DOCKETS 10-0467 AND 10-0527  
IN RESPONSE TO  
COMMONWEALTH EDISON AND COMMISSION STAFF**

Of all of the parties in dockets 10-0467 and 10-0527, only two filed pleadings opposing the Joint Motion to Consolidate. The upshot of the opposition to the Joint Motion is that Commonwealth Edison (“ComEd”) and Staff of the Illinois Commerce Commission (“Staff”) believe that the Commission and the parties should limit their assessment of ComEd’s Alternative Regulation request to the matters that ComEd puts before the Commission and ignore the fact that a ComEd rate case is presently pending, and that many of the legal and factual issues the Commission must consider under Section 9-244 of the Public Utilities Act are also addressed in that rate case. 220 ILCS 5/9-244.

The People of the State of Illinois, AARP, the Citizens Utility Board, and the Chicago Transit Authority (“Joint Movants”) reply to ComEd and the Staff’s responses to their Joint Motion to Consolidate Dockets 10-0467 and 10-0527. Metra filed a response in support of the Motion, and joins this Reply. In further support of the Motion, the Joint Movants and Metra state as follows:

**Reply to ComEd**

1. ComEd argues that the Commission should not consolidate the rate case and its request for Alternative Regulation because the tariffs are different, the legal standards are

different, and the facts are different. ComEd Response at 1-2. ComEd's arguments should be rejected because they would effectively put blinders on the parties and require them to either ignore substantial information contained in the pending rate case or seek administrative notice of specific evidence that is relevant to the assessment of ComEd's Alternative Regulation petition. Putting rate case evidence beyond the reach of the parties and the Commission would hamper the Commission's ability to assess ComEd's petition, and burden the Commission with multiple motions for administrative notice in the foreseeable event that parties find evidence in the rate case that is relevant to the assessment of ComEd's Alternative Regulation petition.

2. ComEd's argument that the tariffs filed in the Alternative Regulation docket are different from the tariffs in the rate case is irrelevant and does not preclude consolidation. The Commission regularly considers tariffs addressing various rates and functions in a single docket. For example, in ComEd's last rate case, ComEd requested the Commission to consider more than 40 different tariff changes, including four new riders covering issues as disparate as uncollectibles, system modernization, storm expense, and supply administration charge (withdrawn). Ill.C.C. Docket 07-0566, Final Order at 1, 103-159 (Sept. 10, 2008). See also Ill.C.C. Docket 09-0166/0167, North Shore Gas and Peoples Gas, Light, and Coke Co., Final Order at 130-198 (riders); Ill.C.C. Docket 07-0241/0242, North Shore Gas and Peoples Gas, Light, and Coke Co., Final Order at 126-189 (riders). In addition, the Commission regularly consolidates dockets involving different operating companies under common ownership, notwithstanding the number of different tariffs and factors at issue. *Id.*; ICC Docket 09-0306 through 09-0311. In the pending rate case, ComEd filed changes to more than 30 tariff sheets. See Ill.C.C. Daily Tariff Filings, June 30, 2010. Rate cases do not typically involve a single tariff, and the fact that a tariff was filed in a separate docket does not preclude consolidation or

imply that it is unreasonable, burdensome, or detrimental to consider it with multiple other tariff changes pending before the Commission.

3. ComEd argues that there are no common factual issues in the rate case and the Alternative Regulation docket. ComEd Response at 4. However, each of the four items included in the Alternative Regulation petition have counterparts in the rate case. In addition to the testimony of ComEd witnesses Michael Guerra and Ross Hemphill, ComEd witness Michael B. McMahan addresses capital investments, including the repair of over 26,500 underground cable faults in 2008 and 2009, as well as future capital costs. He also addresses ComEd's fleet of approximately 2,175 vehicles, including various hybrids, biofuel and flex-fuel vehicles. ComEd Ex. 9.0 Rev. at 38-39 and 44-45. ComEd witnesses Fidel Marquez and Robert Garcia address Advanced Meter Infrastructure costs, which are related to Smart Grid. ComEd Ex. 10.0 at 15-19; ComEd Ex. 23 at 19-20. ComEd witnesses Katherine Houtsma and Mary Ann Emmons address uncollectibles and Customer CARE. ComEd Ex. 6.0 Rev. at 19, 36-38; ComEd Ex. 18 at 3-6. Each of these issues (underground cable, Smart Grid investment, fleet vehicles, and low income support and Customer CARE) is included in ComEd's Alternative Regulation proposal.

4. ComEd ignores the substantial overlap between the issues in its Alternative Regulation docket and in its rate case, arguing that "[n]one of the projects to be funded by ComEd's Alternative Regulation proposal are included in its revenue requirement in the pending case." ComEd Response at 4. But that skirts the real issue: *should* these projects be funded by a separate rate mechanism when the functions and investments appear to be mere extensions of projects that are included in the pending rate case. Although ComEd would like to pre-determine the Commission's answer to this question, the Commission must consider all relevant evidence,

even if it extends beyond the information that ComEd chooses to offer and leads to a different conclusion.

5. ComEd also argues that specific statutory standards apply to its Alternative Regulation petition, and so the Commission should not consolidate its review with its rate case review which includes other legal standards. ComEd Response at 2, 5 ff. This argument should be rejected because rate cases always involve multiple statutory and legal standards. As ComEd admits, a rate case “is governed by traditional Article IX standards” and Section 16-108(c). Id. at 2. Those standards include several specific provisions addressing, *e.g.*, valuation of public utility property (9-210), investments in rate base, including the used and useful standard (9-211), new plant and significant additions (9-212 & 9-213), treatment of construction work in progress or CWIP (9-214), political activity and lobbying (9-224), advertising (9-225- & 9-226), donations (9-227), expert and legal fees (9-229), and rate of return calculations (9-230). The availability of an “alternative regulation” tariff under Section 9-244 is simply one more tariff that the Commission can consider. The fact that a specific statutory section sets the legal standards the Commission must apply to an Alternative Regulation tariff does not make it any different from any number of issues in a rate case where the Commission must conform to statutory directives.

6. ComEd argues that it is impossible to compare its Alternative Regulation proposal to traditional regulation because the “services covered by ComEd’s Alternative Regulation proposal are new and go above or beyond those provided through ComEd’s base rates.” ComEd Response at 6. ComEd does not explain what these “services” are. ComEd is a monopoly provider of electricity delivery, or a “wires only” company. ComEd Ex. 8.0 at 7-11. ComEd has not identified any “new” services that it will provide to consumers should its Alternative

Regulation tariff be approved. Although it seeks this tariff to cover certain expenses and investments, it does not offer any new or different services to the public in its Alternative Regulation petition. The Commission should reject ComEd's argument that consolidation is inappropriate because the petition covers new services, unrelated to the services covered by the rate case, as groundless and unsupported by its petition.

7. ComEd admits that Section 9-244(b)(1) "requires a comparison of the cost of the projects under standard and alternative ratemaking." ComEd Response at 6 (emphasis in original). Although ComEd did not include the costs of the projects in the rate case, the Commission will still have to make that comparison. There is a ComEd rate case open on the same timeline as the Alternative Regulation docket.<sup>1</sup> It only makes sense to consider the comparison mandated by Section 9-244 by consolidating the rate case with the Alternative Regulation petition, based on administrative efficiency and access to relevant information. ComEd's citation to its Verified Petition, which purports to make that comparison, simply highlights that the comparison raises questions of fact that the parties are entitled to test, and the Commission must consider based on a complete record – not solely on ComEd's allegations in its Petition and testimony.

8. ComEd has not refuted the relevance of rate case information in connection with the assessment of benefits under Section 9-244(b)(2). That section requires the Commission to consider whether "the program is likely to result in other substantial and identifiable benefits that would be realized by customers and that would not be realized in the absence of the program." ComEd asserts that the rate case is "merely background information, and is not proof of the 'benefits'" of its proposal. ComEd Response at 7. That is another way of saying that the

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<sup>1</sup> ComEd argues that Section 9-244 does not require it to file a rate case, and Joint Movants do not claim it does. However, when a company chooses to coordinate its Alternative Regulation petition with a rate case filing, only willful blindness can explain ignoring the wealth of information available in the companion rate case.

Commission can be expected to consider whether the “benefits” of ComEd’s proposal could be realized in the absence of Alternative Regulation. Given the ComEd rate case testimony addressing many if not all of the issues raised in the Alternative Regulation petition, there will be a substantial record in the rate case to enable the Commission to determine whether the Alternative Regulation plan will result in benefits that “would not be realized” under traditional regulation.

9. ComEd argues that its Verified Petition contains “proof that the programs are beneficial” and the comparisons required by statute. Therefore, the Company argues, the Commission need not refer to information in the rate case about issues or other statutory requirements, such as financial condition. ComEd Response at 6-8. However, its Petition is just that – a petition, or request. The allegations and statements in the Petition are not evidence, and certainly are not sufficient to justify the rejection of relevant evidence through consolidation, some produced by ComEd and some offered by Staff and intervenors, addressing the factual and legal conclusions inherent in the Alternative Regulation Petition.

10. ComEd’s argument that it will be prejudiced by consolidation should also be rejected. The only problem it found with the combined schedule is that it would reduce the time available to the Company to file surrebuttal testimony. However, it would still have substantially more time to file Surrebuttal in the Alternative Regulation docket than it would have in the rate case (compare 6 days on rate design, 11 days for the rate case, and 15 days for Alternative Regulation). This is not a significant burden in light of the issues involved in the three testimony tracks.

11. The only substantive prejudice that can result from consolidation is that the Commission, the parties and the Company have a more complete factual record upon which to

assess ComEd's petition. Although it is understandable that ComEd would like to control the evidence submitted, the Commission must assess ComEd's proposal in light of *all* relevant evidence and take care that consumers are not burdened with a plan that will increase, rather than lower rates, does not produce "substantial and identifiable benefits" compared to the absence of the plan or is otherwise inappropriate.

### **Reply to Staff**

12. As specified above, the Commission must reject Staff's suggestion that there is not substantial overlap between the Alternative Regulation and rate case dockets. Clearly the four items in the Alternative Regulation proposal are simply aspects of expenses that are included in ComEd's testimony in the rate case. See page 2-3 above.

13. Staff also argues that Section 9-244 contains "forward looking theoretical standards" and requires the Commission to compare what is likely under one regulatory approach to what is likely under Alternative Regulation. Staff Response at 2. The notion that the Commission's review of Alternative Regulation should be "theoretical" only should be rejected. The rates set as a result of Alternative Regulation are not theoretical – they are very real and are paid by consumers throughout ComEd's service area. When actual evidence, as opposed to theory, is available, it would be an abuse of discretion to ignore it.

14. It is significant that Staff recognizes that administrative economies might be realized through consolidation. Staff Response at 3. In the absence of consolidation, parties will have to consider whether to refile testimony relevant to the rate case and Alternative Regulation in both cases at substantial cost and possible confusion. The Commission can also expect motions for administrative notice, notwithstanding that requests for administrative notice of transcripts, exhibits, pleadings or other matters in other dockets is discouraged. 83 Ill. Adm. Code

200.640(a)(2) and (b). The integration of the issues that would result from consolidation would be lost, and a more ad hoc approach to the issues and the testimony will result in a fragmented record, to the detriment of the Commission that has to evaluate ComEd's proposal.

WHEREFORE, the People of the State of Illinois, AARP, the Citizens Utility Board and the Chicago Transit Authority request that the Commission consolidate Dockets 10-0467 and 10-0527 and adopt the schedule set out in Exhibit A to the Joint Motion.

Respectfully Submitted,

The People of the State of Illinois  
By LISA MADIGAN, Attorney General

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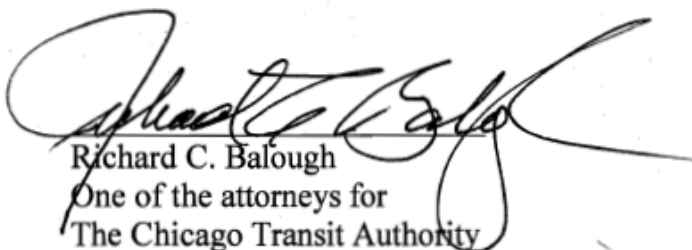
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